

JOURNAL OF THE SENATE

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Friday, July 26, 1957

The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carlton	Getzen	Morgan
Barber	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kicklitter	Stratton
Cabot	Gautier	Knight	

—35.

A quorum present.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Thursday, July 25, 1957, was dispensed with.

The Senate daily Journal of Thursday, July 25, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: Senator Neblett, will you pray?

SENATOR NEBLETT: Almighty God, Father of us all:

We pray Thy blessings upon this Senate and upon the people here in attendance.

Heavenly Father, give us strength, courage and understanding, love and obedience to do Thy will. We are but frail instruments within our power.

Give us the wisdom to lay aside human prejudice and intolerance. Lift from our eyes and hearts the veil of human frailty, so we may attune our hearts and minds to Thee, Father of mankind, and think and speak in a manner worthy of children of God.

Bless the rich fellowship of these, Thy servants, chosen by Thy people to resolve the complex and difficult affairs of our beloved State.

Send forth Thy light, oh Lord, that it may lead us here below, and in Thine own good time, to those holy and everlasting mansions which are the goal of all Thy children.

Humble our pride; awaken our consciousness; make us reverent and prayerful and obedient to Thy will.

This we pray in the name of Thy Son, our Savior and Redeemer, Jesus Christ. Amen.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

MR. MUSSELMAN: We'd like to call Mr. Heller back to the stand for a few more questions.

Thereupon,

DANIEL NEAL HELLER,

resumed the stand, and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. MUSSELMAN:

Q Mr. Heller, I have just a few more questions to ask you.

A Yes sir.

Q There was an occasion in which you petitioned the Court for instructions as to what to do about a \$5,000 check rendered to Mr. J. A. Dowling by Mr. Moseley, I believe.

Would you look at Entry Number 438 of the Court file, please.

A Yes sir, yes sir.

Q What is that petition?

A In substance - - -

Q Give it in substance, please.

A In substance, there was an allegation that a person named Moseley had made a loan to Mr. Dowling in December, 1952, in the amount of \$5,000, and this person was demanding payment of the \$5,000.

Q And what proof was offered, Mr. Heller, as to the existence of this debt?

A Well, there was an affidavit made by the creditor, or lender, and there was shown to us the check, which was endorsed in the handwriting of Mr. Dowling, and there was an indication on the check that it had cleared through the regular banking procedure.

Q Was Mr. Moseley a tenant of Mr. Dowling?

A There was a Moseley in Miami Beach, that was a tenant of Mr. Dowling.

Q Did you establish that this check was not a payment of rent, but was really conclusive of the fact of a loan of \$5,000?

A We were satisfied that this was not a rent payment.

Q And what did the Court order in that instance?

A I don't find - - - oh, yes, there was an order that - - -

Q What's the Court file number of that entry?

A 442, 443.

The Court ordered that the money be paid.

Q And the Court ordered this \$5,000 be paid to Mr. Moseley, is that correct?

A That's right, under the provision.

SENATOR KNIGHT: Mr. Chief Justice, could we get - - -

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: - - - the attorney and the witness to speak a little louder. We're having a difficult time hearing back here. Maybe they could turn the machine up a little bit.

THE WITNESS: I can get closer to it.

The Court ordered that the money be repaid, which was done by the curators.

BY MR. MUSSELMAN:

Q Was there any testimony taken about this debt, other than this affidavit, do you recall?

A I do not, offhand, no sir.

Q All right, sir. The next entry I wish to discuss is Entry Number 446, which was your interim report.

A Yes sir.

Q Would you please read that interim report to the Court?

A It's six pages in length.

Q Well, give us the substance, then, rather than to read it. You can summarize it.

A Yes sir.

The curators reported to the Court that on the date of March 1, 1955, that they had finally realized some cash assets.

They reported to the Court that the - - - both Mr. and Mrs. Dowling were living at - - - on Miami Beach, under what the curators described as a deplorable condition, and the curators represented to the Court that this large, two-story house in which these people were living had been - - - not been painted since it was built; at least, it so appeared.

They mentioned that there were cracks in the wall and the protective plaster had fallen down. They mentioned that the wood around the house had rotted away, and there was water leakage.

They mentioned that in this large three lots on the bay, that there was no living blade of grass, that there were no trees, no shrubs; there was no living thing, other than some weeds and sandspurs.

They mentioned that the sprinkler system was broken, and that there was a depression of land at the sea wall.

They mentioned how much Mr. Dowling enjoyed looking out of that window, and that the scene that he saw at that time was very bad.

They spoke about the sprinkler system. They spoke about the condition of the inside of the house. They reported that because of the unfortunate condition of Mr. Dowling, who had no control over his bladder and his waste, no release from his urine.

There were no pictures on any walls; there were no drapes or anything like that; and they mentioned that the kitchen tile was broken, and that it needed linoleum repairs, and so forth; and mentioned that Mr. Dowling was then - - - had a 1951 Oldsmobile, which was in very bad mechanical shape, and that to fix it up it would require several hundred dollars. Both Mr. and Mrs. Dowling didn't want to ride in the car; they didn't feel safe in it, and they didn't like what it looked like.

And they went on to recite other things which were needed for Mr. and Mrs. Dowling to make them live nicer, and to be happier where they were living.

And so, the curators attached pictures of the property, eight by ten pictures - - -

Q Did that extension that you are now referring to state that the house had been refurbished?

A Yes, I think it does.

I think it also recites that a wing was built on the house. This was a two-story house, and a pretty big house, and Mr. Dowling was paralyzed, and they had to drag him up the spiral staircase, and - - -

Q All right, sir. What is the date of this petition?

MR. HUNT: Let the witness finish the question, if you don't mind, Mr. Musselman.

MR. MUSSELMAN: I want him to respond, but I think we can help a little bit here, Mr. Hunt, in speeding it up.

THE WITNESS: The date of the petition is May 5, 1955.

Now, as I said, Mr. Dowling just couldn't - - -

MR. HUNT: Will you speak out just a little bit, please sir?

THE WITNESS: I'm sorry.

Mr. Dowling just couldn't negotiate those stairs, even when a couple was helping him, and the doctors informed us that it was unsafe and dangerous to run the risk of dragging a half-paralyzed man up a flight to his bedroom.

So, we had to build a wing onto this house, and the wing, of course, was specially designed for him. In other words, there wasn't a step in the room, in or out of the room; there were no steps into the bathroom, and there were no steps into the shower; and it had a series of warning devices, that would be, if he ever tripped or fell, would set off an alarm bell.

Of course, that was completely air-conditioned, and there was - - - like a dressing room entrance to it, and it sort of made it possible for him to be on one level entirely, and to have his own sitting room and drawing room, and this big picture window, looking out on the bay.

And it recited also that there were these photographs, which were pictures of the property before and after it was approved; and Mr. Dowling insisted on having a Cadillac car, and we were only too happy to get it for him, and he was very proud to be owning it and driving it.

And we completely landscaped the property, all the lots. We had it bulldozed, had it leveled off and put in fill, and put in solid sod and trees and so forth, and made it very beautiful for him; fixed the sprinkler system, and painted the house inside and out, and repaired all things.

We took out all the furniture that was there before, and replaced it entirely, with lovely pictures on the wall and drapes, and Mrs. Dowling helped pick those things out. She was very, very pleased about that.

BY MR. MUSSELMAN:

Q Would you please give us the figure of the various items of cost? I think you alleged them in that petition, sir?

A Yes sir, I do.

The total work for the kitchen work and the formica and the plumbing work and window work was \$4,658.36.

The cost of the sprinkler was \$575; the repaving, resurfacing, that was \$395.

The cost of the Cadillac car was \$6,419.67. The cost to build the wing on the house - - - and by the way, this had to be built on pilings, because it was on the bay, and we had to employ an architect, engineer, Robert M. Little, and the cost of the wing on the house was \$13,740.70, and the services of the architect were \$789.60;

That the cost of the furniture was \$16,540. This included the draperies and pictures and refurbishing the entire house on both floors.

Well, now, let's see - - - well, \$789.60 was an additional charge for air-conditioning in those bedrooms, and the architect's bill was \$960; I think that's approximately correct.

Q How about landscaping, Mr. Heller?

A Yes. That was \$8,000. Let me get the exact figure for you, if I may.

Yes, \$8,077.90.

Q How about painting the house?

A We also arranged for - - - I said plumbing work and window work and formica work, and the total for that was \$4,658.36.

Q Did you draw a total of those expenses in the petition?

A Well, I attached the original bills and invoices, and I set forth each one in particularity.

I don't see a total figure, but in each paragraph, each one of the items is set forth, and the bills are attached, and photographs, before and after, and so forth.

Q Do you have a pencil with you, to total up these figures as I give them to you?

A Yes sir. To save time, you probably already have a total there. If you can give me the figure, I'll see what I get.

Q Well, let's check the figures out again.

Let's see, building the room on was \$13,740?

A That's the figure that I read to you, yes sir.

Q And painting the house - - -

A That was that wing on the house?

Q That's right?

A That's right.

Q And painting the house was \$4,658.36?

A Well, and the formica work and the other work in the kitchen.

MR. HUNT: We can't hear you.

THE WITNESS: That was the formica work and the plumbing work and the outside window work.

No, what was that figure again?

BY MR. MUSSELMAN:

Q \$4,658.36.

The air conditioning, \$789.60?

A Yes.

Q The landscaping, \$8,077.90?

A Yes.

Q Sprinkler system, \$575.

Repaving the driveway, \$395.

The furniture - - - did you get that last figure?

A I think so, yes sir.

Q Furniture, \$16,540; and the architectural fee, \$960, to which I've added the Cadillac automobile.

If you wish to total that now, instead of totaling it with the Cadillac - - - or you can add the Cadillac in it, if you wish. Add the Cadillac in.

A What was that figure?

Q \$6,419.67.

A Do you have a total in the adding machine?

Q No, I don't have an adding machine total.

A Well, what have you got?

Q I have a total of \$52,155.53. See if - - - verify that, please sir.

CHIEF JUSTICE TERRELL: Mr. Heller, while you're on those actions, Senator Branch sends up this question:

"How much area was involved in the landscaping?"

I noticed you had that item just a minute ago.

THE WITNESS: The house lot size was approximately 200 by 200; then there was an area on the street, of 200 - - - approximately 200 width and approximately 20 or 25 feet depth.

I must have copied one of those figures wrong, because you say a total of \$52,000?

BY MR. MUSSELMAN:

Q That's the total I got.

A Okay.

Q We're willing to stipulate on that total.

All right, sir, I'm going to ask you to skip around in the file, now, and find Entry Number 515, which will be in Volume 3, I think.

A Yes sir, I find it.

Q What is this petition?

A This is a petition for instructions.

Q Would you read the petition to us, or give us the substance, if it is a long petition?

A In substance, it - - - it's dated August 1, 1955.

It recites that Mr. Dowling has now died, and it recites that she's living alone with this couple who had taken care of her, in this two-story house with this new wing;

And it recites that we have turned the cash assets of Mr. Dowling over to the executors of Mr. Dowling's will; and it recites that Mrs. Dowling is quite unhappy at that time with the house, because it reminded her of the death of her husband; and it was suggested that perhaps a smaller house be purchased for her, or perhaps an air-conditioned apartment, or something of that sort; and it asks the Court for instructions as to what to do.

Q As to whether or not to convert the house to cash and to put her into an apartment?

A Whether to get her, you know, like a ranch-type house, or an apartment, and I was asking the Court whether she would be more comfortable in smaller quarters. Her husband was then dead.

Q Referring back, a minute, to the petition that you were talking about, which is your interim report, there are some things I wish to establish there, sir, if you will turn back to that.

Entry Number 446.

A Yes sir.

Q The date of that petition, I believe you stated, was May 5, 1955, is that correct?

A That's right.

MR. BEASLEY: May 5? I thought it was March 5.

BY MR. MUSSELMAN:

Q Prior to this time, was all of the work done on the house, and you were simply reporting to the Court, or were you asking the Court for permission in this petition?

A This petition recited the work which had already been done and furnished to the Ward from a period of approximately March 1 to the period of approximately May 5.

Q The prior approval of the Court was now obtained as to doing that, is that correct?

A That's correct, sir.

Q Now, where were the funds - - - had you already, at the date of this petition, paid for these items?

A Yes sir, we had.

Q And where did these funds come from to pay these items?

A These were liquid assets in our hands, as recited in the petition, after date of March 1, when we negotiated and had this tenant pay the rent in advance, and other cash proceeds, we then proceeded to make the Dowlings live nicer and made - - - helped them to enjoy their money, and - - - so that's it.

Q Whose funds were they? Mr. Dowling's estate, or Mrs. Dowling's?

A These were funds which were the property of Mr. Dowling.

Q And who did the house belong to? Mrs. Dowling?

A The house belonged to Mrs. Dowling.

Q And you were the curators for the estates of Mr. Dowling and Mrs. Dowling, is that correct?

A That's right, sir.

Q Did you ask the Court for instructions, or for permission to assess Mrs. Dowling's estate for these costs in that petition, or - - -

A Yes, yes, I believe we - - - we did not do it in this petition; it was in a later petition that we alleged that both Mr. and Mrs. Dowling were living in the same house, although title to the house was in Mrs. Dowling's name, and we had used Mr. Dowling's money to fix up Mrs. Dowling's house, and we asked the Court whether or not that should not be a charge against Mrs. Dowling's estate for the improvements made by Mr. Dowling's money.

Q Did the Court allow that charge?

A No, the Court ruled that the charges should not be a charge against the estate of Mrs. Dowling, I believe, on the theory that it was the obligation and duty of the husband to provide necessities to his wife, and the Court, I believe, in its ruling, or in open Court, announced that it was the opinion of the Court that it was the duty of the husband to provide her with the furniture, and a bed to sleep on, and a house that was fixed up, and so forth.

Q Now, Mr. Heller, referring to that petition you have before you, Entry 446, who was the wholesaler or retailer that sold the furniture to the Dowling estate?

A That was purchased from Lester Hart.

Q Now, Mr. Hart's name came out here a day or so ago in the testimony. Is he the same gentleman who purchased the furniture from the Stengel estate?

A That's correct, that's the same Lester Hart.

Q Before we leave this particular phase, I have some questions by Senator Pearce:

"Was there any effort made to buy the car at a price cheaper than list price?"

A Yes, an unsuccessful effort was made in Miami, because when I went to inquire, I found out that there was a waiting list, and there is, every year, a waiting list, and the Cadillac agency pretty much does you a favor when they put you on the waiting list. It's impossible, in Miami, as far as I know, to obtain a new Cadillac car at a discount.

Q Here's a question by Senator Connor.

A Yes sir.

Q "What was Mr. Dowling's age when the house was repaired?"

A Approximately 76.

Q And the second question:

"How long did Mr. Dowling live after the repairs were made?"

A Unfortunately, Mr. Dowling died shortly thereafter.

Q How long thereafter, Mr. Heller?

A I think I testified yesterday that he died in the month of May, 1955, and the repairs were done in the month of March, 1955.

Q Mr. Dowling died on May 25, 1955, is that correct?

A That date sounds familiar, yes sir.

Q Now, I wish you would now turn to Entry Number 509.

A Yes sir, I am doing that.

Q What is that entry, sir?

A This is again a petition for instructions, and reporting that Mr. Dowling has departed this life on May 25, and reporting that John Prunty and Mr. Heller have been appointed as curators by the County Judge's Court, and that a will has been admitted to probate in the County Judge's Court.

It reports that the will was executed after the date that the doctors said that he was incompetent; and it says that the will doesn't send the estate to his wife, but rather, it creates a trust, after certain bequests, the income of which was to go to Mrs. Dowling.

Q What is the date of that petition?

A July 21, 1955.

Q All right, sir. Now, look at Entry Number 510, and tell us what that entry is?

A That's an order entered by the Circuit Judge.

Q What?

A Instructing the curators to file a contest of the will, and to take such other and further actions as necessary to protect the best interests of Mrs. Ina Dowling, the surviving widow.

Q I believe you have read from the petition that the will was prepared after the doctors had declared him to be incapable, is that correct?

A Yes sir.

Q Was that before or after the order declaring him incompetent was entered?

A The execution of the will took place after the examination by the doctors, after the filing of their report, the date of their report, and before the adjudication by the Circuit Court that he should have a curator.

Q Was that during the time that you were acting as guardian ad litem - - -

A Yes sir, it was.

Q - - - for him?

A That's right.

Q I believe you further testified that you and Mr. Prunty were named as curators in the probate Court, is that correct?

A Yes, until the will was settled.

Q Now, had there been any decision rendered in the probate Court as to whether this will was to be probated or not?

A Yes, the probate Court admitted the will to probate.

Q Has there been any appeal taken from that decision of the probate Court?

A Yes, an appeal is now pending.

Q In whose division is the appeal pending, Mr. Heller?

A The last hearing, that I did not attend, because I was out of the city, was before Judge Wiseheart.

Q Is the matter on appeal from the probate Court still in the division of Judge Wiseheart?

A I believe that it is.

Q Mr. Heller, do you find a copy of the will in the file? I'm sure it's there. Will you locate it?

A Yes sir, I do find a copy.

Q Who prepared the will for Mr. Dowling?

A The attorneys, his own attorneys; that was Mr. Klein. Mr. Klein, as I testified before, Nathaniel Klein.

Q What firm is that?

A Warren, Klein, Lehrman, Shoreinstein & Kline.

Q I have some more questions from Senators.

A Yes sir.

Q This question is from Senator Scott Kelly.

A Yes sir.

Q "Has the house been sold? If so, what was the sales price?"

A It has not been sold, as Mrs. Dowling has been living there until recently, when she went North.

Q "What was the size of the addition to the house?"

A We have an architect's blueprint here. I think I can give it to you.

Let's see, one dimension here, of thirty-one feet, three inches; that would be the east-west dimension.

I see another dimension here, of eighteen feet, eight inches; that would be the north-south dimension.

Does that answer the question?

And on the second page is the engineering diagram of the roof and the piling upon which the addition, the wing was built.

Q We have a - - - I believe that answers the question.

We have a question from Senator Davis:

"Was the Klein who prepared the will the same Klein that was in the firm that received \$8,000, was awarded \$8,000 by the order of the Court, on October 21?"

A Yes sir, that's the same Attorney Klein.

Q Question by Senator Connor:

A Yes sir.

Q "Was not the land cleared and landscaped around the house that was repaired less than one acre, and the price was paid of \$8,000?"

A Well, as I said, the lot size was approximately 200 by 200. The landscaping consisted of - - - I would like to read to you what was put in. This is a full page of specifications:

"Remove weeds and emaciated grasses from entire property area and haul away.

"Fill waterfront area at bulkhead to within eight inches from top of C. B. S. bulkhead wall.

"Regrade entire property area as required to bring drainage away from building.

"Furnish and plant entire property area, exclusive of house and improvements, by including a ten-foot strip on parkway with bitter blue sod, plants and sod to be rolled and top dressed.

"Furnish and plant the following listed trees, plants and shrubs:

"Twenty-five single scarlet hibiscus, three and a half by three:

"Two podocarpus sheared comlux;

"Fifteen ligustrum lucidum, grafted

"Thirty pentas

"Twenty plumbago capensis

"One areca lutezens

"Two schefflera

"Ten dracena eugene andre

"Ten ixora

"Three melaleuca trees

"Two picus exotica trees

"One sapadilla tree

"Ten pittosporum tobira

"Two cocos plumosa palms

"Twenty copsia plumosa

"Two eight-foot seagrape trees

"All materials are to be free from all infestation, and shall have well-developed private root systems and be grown to the character of the species."

Q I have some more questions from Senators.

Senator Stratton wants to know:

"What happened to the \$300,000 in bonds and stocks?"

A These were returned by us, the curators, to Mr. Lane, as attorney for Mrs. Dowling.

I think Mr. Lane then returned them to Mrs. Dowling when she was in Massachusetts, and the bulk of that property, I think, was then kept or retained for her in Massachusetts.

Q Senator Shands asks you this question:

"You testified yesterday, as one justification for your fees as a curator, that you were also attorney for your Ward. How do you now account for Mr. Dowling getting another attorney to draw up his will, and who authorized it?"

A Well, the will was drawn for Mr. Dowling before he had curators.

In other words, the will was drawn for Mr. Dowling in March. He had no curators until June. Therefore, he had private counsel, Attorney Nathaniel J. Klein, who drew the will for him.

Q At that time, all he had was a guardian ad litem and a temporary receiver, is that correct?

A There was a receiver of his property, Mr. Perlmutter, and I was the guardian ad litem, and I had no knowledge that he had drawn this will.

Q What date does the will show?

A The will was executed in March, 19 - - -

SENATOR SHANDS: What date?

THE WITNESS: What? yes. I had the page just a minute ago. Do you have that page?

MR. MUSSELMAN: No, I don't.

THE WITNESS: I'd like to give you the exact date, if I may.

The will was executed by Mr. Dowling, or acknowledged by him, on the 29th day of March, 1954, and the proceeding had been filed by Mrs. Dowling on March 18, 1954, and the psychiatrists were appointed on March 18, 1954, and if my memory serves me right, without reaching for the file, the psychiatrists examined him on March 25 and 26, respectively, the two psychiatrists, and four days later, on the 29th day of March, 1954, he executed this will.

SENATOR SHANDS: What day were you appointed guardian?

THE WITNESS: Sir?

BY MR. MUSSELMAN:

Q What is the date of your appointment as guardian ad litem?

A March 18, 1954.

SENATOR SHANDS: And the will was executed after you were appointed as guardian?

THE WITNESS: That's correct, sir, yes sir, without my knowledge. I had no knowledge of it.

BY MR. MUSSELMAN:

Q Mr. Heller, will you turn to Entry Number 494, please sir?

A Yes sir. I don't see any Entry 494. Mine only goes 487.

Q I think you'll find the file is out of order, sir. I think you'll find it back in the middle of the file. It was delivered to us in that condition.

MR. HUNT: Could you tell the witness what you're referring to? Maybe he'll know it by sight.

BY MR. MUSSELMAN:

Q The order ratifying and confirming the curators' acts.

A Yes sir, I've just found it.

Q Would you read that order into the record, please?

A I think it will save time if I give it to you in substance.

Q All right, you can tell us what it was, in substance.

A This was filed after Mr. Dowling's death, to which there was appended a certified accountant's report of all receipts and disbursements, and of course, to approve the receipts and disbursements, and the certain bills that were then outstanding, discharge of curators, and that was the fee order which you referred to yesterday, that was the last fee ordered to be paid - - - it was paid at different times - - - to Judge Prunty and Mr. Heller, "Final reimbursement for costs, expenses and fees, \$4,762.38 each."

Q I think you testified yesterday, Mr. Heller, that you had been working for two years?

A Three years.

Q Three years?

A Yes sir.

Q Are you precluded from petitioning the Court for additional fees, as subsequent to June 8, 1955? Those fees aren't paid you in advance for your fees, are they, sir?

A No, the fees are paid after the services have been rendered, but as I pointed out to you yesterday, I have not had any monies paid to me since that date.

Q Since that date, June 8, 1955?

A That's approximately correct.

Q Did you petition - - - did you and Mr. Prunty petition the Massachusetts Court for any fee?

A In the will contest case the Massachusetts conservator was anxious that we file a contest of the Florida will, which we did, with his help and cooperation; and after that will contest was through, why, we filed a petition in Massachusetts, in the Massachusetts Court for reimbursement for services rendered in the will contest, and the Massachusetts Judge was concerned, upon advice of the guardian ad litem that he had appointed, that to pay the fees directly to the Florida lawyers might be construed as a waiver of domicile by the Massachusetts jurisdiction, in view of the fact that there was a Florida will contest.

Therefore, the Judge told the lawyers and guardian ad litem that we could either wait until all the wills were resolved - - - and I found out later that there were several wills, that dated back to previous years - - - or we could petition the Florida Court for reimbursement, and then seek to have that satisfied in the Massachusetts jurisdiction, and we chose the latter course, to wait to see when the matter would be resolved.

Q You withdrew your petition?

A That's right, we voluntarily withdrew it ourselves.

Q Referring to the order, Number 494, which is the order ratifying your actions, and discharging you as curators for Mr. Dowling - - -

A Yes sir.

Q - - - does that award guardian ad litem fees also?

A I'm reading quickly, sir, but I do not find the order.

Q Will you just abandon that order, and find the order awarding Mr. John Wright \$950 for his services?

A Do you have the page number?

Q No, I'm sorry, I don't. I couldn't find it.

A These papers are in confused order. I'm sorry.

Q I believe that is sufficient, sir. We can submit the Court files themselves into evidence, and I think the record will speak for itself.

A Yes sir.

MR. MUSSELMAN: At this time I would like to tender these three Court files themselves into evidence under the stipulation that we have.

MR. HUNT: No objection.

MR. MUSSELMAN: Your witness, Judge.

(Whereupon, the documents were received and filed in evidence and marked House Managers' Exhibit 22.)

SENATOR SHANDS: I'd like to ask just one question.

Mr. Heller, you testified that this fee and all - - - this will was drawn, not to your knowledge?

THE WITNESS: Yes sir, that's correct.

SENATOR SHANDS: And the order was issued, appointing you as guardian for Mr. Dowling on the 18th of March?

THE WITNESS: Yes sir, that's correct.

SENATOR SHANDS: And the will was drawn on what day?

THE WITNESS: The 29th day of March, 1954.

SENATOR SHANDS: And yet, the order was a matter of public record in the Court, was it not?

THE WITNESS: Yes sir.

SENATOR SHANDS: Public notice to Mr. Klein.

THE WITNESS: Well, and also Mr. Klein met me, and upon my appointment, I immediately went to Mr. Dowling's house.

SENATOR SHANDS: Do I understand that this petition for the payment of this will was ordered, even though that order had been issued?

THE WITNESS: Sir?

SENATOR SHANDS: Do I understand that you petitioned the Court to allow you to pay for the drawing of this will, even though it was - - -

THE WITNESS: Oh, no, no, no sir, we - - - Judge Prunty and I filed our opposition to the will.

SENATOR SHANDS: I don't mean opposition to the will, the payment of the fee to Mr. Klein.

THE WITNESS: Well, sir, at the time that Mr. Klein's fee was paid, there was no recitation in this petition, in his petition, that one of the services for which he was being paid was the drafting of the will; and so it was not discovered that a will existed until several weeks after Mr. Dowling died, and the County Judge's file will reflect that.

Judge Prunty and I did not know that any will existed, and that's why Judge Dowling - - - no relation - - - County Judge, appointed Judge Prunty and myself as curators, since we knew of - - - we did not know of the existence of any will, and then we wrote letters to all of the various lawyers who might know something about a will, and then it was that we found out that Mr. Klein had a will, and that Mr. Klein had offered the will to probate, and it was admitted to probate.

SENATOR SHANDS: Thank you.

THE WITNESS: Yes sir.

MR. HUNT: If Your Honor please, if the Court has no objection to assemble for cross examination in a deliberate way, if the Senate would like to afford us ten minutes at this time, then we can go right through with the cross examination without a break.

SENATOR POPE: Your Honor, I have one question I submitted that I would like to have answered before - - -

MR. HUNT: Yes sir.

MR. MUSSELMAN: "What was the reason for filing opposition to the will?" By Senator Pope.

THE WITNESS: Yes sir.

First of all, it was our opinion that in view of the fact that

the doctors examined him on March 25, and said, "This man is incompetent," we could not understand how, on March 29, four days later, he could be competent.

Furthermore, an examination of the will itself inclines me to think that Mr. Dowling did not read it, or if he did read it, he did not understand it.

For example, he was then married fifty years to Ina I-n-a Dowling. In the will, she's called "Inez," I-n-e-z; and there were other indications which seemed to me, upon the face of the will, that he either didn't understand this will, or that he was not capable, mentally, of executing such a will.

SENATOR POPE: I'd like to have this question asked.

MR. MUSSELMAN: "Mr. Heller, if the appeal is successful, and the will is broken, what is the method of distribution under the will?"

THE WITNESS: I'm trying to find the page of the will, if you'll just let me find that page of the will.

Well, there were specific bequests under the will, which would come out each year. For example, to the cousin, Harry Cunningham, there was a bequest of \$2,000 outright upon his death, and a further sum of \$2,000 each year thereafter.

To a cousin, Mrs. Nichols, the same arrangement, \$2,000 outright gift, and \$2,000 each year thereafter.

To his janitor in the Dowling Building, the sum of \$1,000 outright on his death.

Now, to Grace Donlin, his secretary, the sum of \$500 each year during the remainder of her life.

MR. BEASLEY: \$500?

THE WITNESS: \$500.

I might add that Mr. Dowling had fired this secretary about two years before his incompetency, and had refused to pay her any salary. Therefore, it seems - - - and this woman testified in the Florida Court - - - and therefore, it seems very strange, very strange, that he should fire her, refuse to pay her any salary for a period of two years, and then in his will leave her \$500 per year for life for her.

So that we now have specific bequests of \$4500 each year from the income of the estate.

Now, instead of giving his entire estate to his wife, if there had been no will, why, she would have received all of his property and all of his cash; whereas, now, all that she received would be his income from this Florida property, less the specific bequests which we estimated would net her \$8,000 or \$9,000 a year, from which she would then have to pay taxes, and so forth, and we felt that her station in life was such that she was spending more than \$8,000 or \$9,000 a year to live comfortably, the way she should live, and she was of age also.

Now, if she had received the bulk of his estate, then she could have spent as much money as she desired.

There was also this factor: Mr. Dowling was not interested in church. I don't know - - - I can't say that he was an atheist, but he had no church interest, but shortly before the time that he died, he was encouraged to and did, in fact, become affiliated with a church, and was buried by the rite of that church.

Well, now, Mrs. Dowling was a very devout Catholic, and by the terms of this will, she just received the income, but the corpus of the estate, upon her death, went to the Salvation Army; and therefore, it was not an estate which would pass through her. In other words, she would have no capacity to give to any charity or anything of the sort, that she might want to do. In other words, she had lost control over it.

SENATOR POPE: Do we have to write these questions? I've got another question I'd like to ask.

My thought here, the effect of this will, if it's broken, would be to place the assets of the deceased under the control of the wife which, in reality, would be under the control of your attorney for the curator, is that not correct?

THE WITNESS: Well, depending upon what happened to those other four or five wills, we are also including that, but

the desire was that she should have the right to use the money as she saw fit.

SENATOR POPE: But that would have to be at your discretion, as curator?

THE WITNESS: Well, unless she had executed a will prior to the time of the curatorship, most likely; and therefore, the money would go through her, you see, and through her estate to these charities that she would like to benefit upon her death.

MR. MUSSELMAN: I have some more questions about it.

THE WITNESS: Yes sir.

MR. MUSSELMAN: This is by Senator Connor:

"If the will was held good, you would have lost your job as curator, would you not?"

THE WITNESS: If the will was held good, I would have lost what job? I don't understand.

I am still curator to Mrs. Dowling, and the will was held bad.

Does that answer the question?

MR. HUNT: Read the question again. I don't believe the witness understands it.

MR. MUSSELMAN: "If the will was held good, you would have lost your job as curator, would you not?"

THE WITNESS: I don't think the result of that would affect whether or not a curator would have been appointed for Mrs. Dowling.

Now, I still don't quite understand that question.

MR. MUSSELMAN: Well, it may relate to this one:

"When the will was admitted to probate, did you - - - were you discharged as curators in the probate Court?"

THE WITNESS: Oh, yes, in the probate Court the curatorship was a temporary appointment, under the County Judge's law, under the law of the State of Florida, guardianship law, a curatorship is merely a temporary arrangement, upon the death of a person, until the will, or a will is found, and some disposition is made by the County Judge.

It is, at best, a temporary appointment.

MR. MUSSELMAN: Senator Connor's second question says:

"Did this have anything to do with your contesting the will?"

THE WITNESS: Actually, no.

MR. MUSSELMAN: This is by Senator Getzen:

"In buying the furniture, was there any effort made to get competitive bids from other dealers of furniture? What effort was made to get the best price on the furniture, when purchased?"

THE WITNESS: Mrs. Dowling herself chose the drapes and almost all of the furniture, and we were satisfied that they were what she liked, what she wanted, and that we were paying a reasonable and fair price for them.

SENATOR SHANDS: I'd like to ask a question following that.

THE WITNESS: Sir?

SENATOR SHANDS: You have asked, now, for Mrs. Dowling to be adjudged incompetent, isn't that correct?

THE WITNESS: Sir?

SENATOR SHANDS: The order of Court was that Mrs. Dowling was adjudged incompetent, is that correct? Is that the reason you were appointed curator for her?

THE WITNESS: Well, under this 747 Statute, - - -

SENATOR SHANDS: I'm not talking about the statute - - -

THE WITNESS: Yes sir.

SENATOR SHANDS: Isn't that the reason you were appointed curator?

THE WITNESS: Well, I think there's a difference between incompetency and inability to care for your property, and I don't know that the - - -

SENATOR SHANDS: I'm not concerned with that. Just answer my question.

Mrs. Dowling was adjudged incompetent on your petition to be appointed curator, isn't that correct?

THE WITNESS: I don't think that is technically correct, but in essence, that is correct, yes sir.

SENATOR SHANDS: Then you had - - - then you would allow, and petitioned for her to be allowed, although she was incompetent, to be the sole judge in the selection of all this furniture on the property, is that correct?

THE WITNESS: In terms of what pleased her, yes sir; in terms of the spending of the money, we supervised that, yes sir.

In other words, we wanted her to be happy, Mrs. Dowling to be happy, and if she wanted a particular picture, that's what we would get for her, and we tried to get it at the best possible price.

MR. MUSSELMAN: Here's a question by Senator Connor.

THE WITNESS: Yes sir.

MR. MUSSELMAN: "Did you get a Court order to pay anymore checks written by Mr. Dowling other than the \$5,000?"

I believe he has reference to the check that was given to Mr. Dowling, Mr. Moseley's check to Mr. Dowling.

THE WITNESS: I didn't quite understand that.

MR. MUSSELMAN: I'll read it again:

"Did you get a Court order to pay anymore checks written by Mr. Dowling other than the \$5,000?"

THE WITNESS: There were no other checks, that I recall, written to Mr. Dowling.

This was a loan to Mr. Dowling.

MR. MUSSELMAN: The second one:

"Do people in Dade County usually give another person a check for \$5,000 without even taking a note?"

THE WITNESS: Yes sir, it happens every day, that money is loaned on the face of a check, and the check is the receipt for the loan.

SENATOR BELSER: Mr. Chief Justice, we have a ten-minute recess, is that correct?

CHIEF JUSTICE TERRELL: As soon as he gets through with this line here.

MR. HUNT: He has indicated that he has.

CHIEF JUSTICE TERRELL: Judge Hunt has requested a ten-minute recess to organize his program for cross examination.

Are you through, Mr. Musselman?

MR. MUSSELMAN: I have about one more question, but if they're going to organize their cross examination, we'll relinquish the witness at this time.

CHIEF JUSTICE TERRELL: Do you want to present that question now, or when you come back?

MR. MUSSELMAN: We'll do that later, Judge.

CHIEF JUSTICE TERRELL: Without objection, the Court will take a ten-minute recess for Judge Hunt to organize his cross examination.

Whereupon, a recess was taken from 10:30 o'clock, a.m., to 10:40 o'clock, a.m.

CHIEF JUSTICE TERRELL: Order in Court. A quorum is declared present.

MR. HUNT: Is Your Honor ready to proceed?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: Do you have any further questions, Mr. Musselman?

MR. MUSSELMAN: No further questions.

SENATOR JOHNS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Johns.

SENATOR JOHNS: In the orderly procedure of the Court, I would like to inquire of the Court if the rule has been revoked, Mr. Chief Justice, of the Senate, in regard to sending questions up, and the Chief Justice asking them, or are they supposed to send them to the prosecution?

CHIEF JUSTICE TERRELL: The rule hasn't been revoked, Senator Johns.

A number of questions have been sent up to the attorneys here for the State.

SENATOR JOHNS: Thank you, sir.

CHIEF JUSTICE TERRELL: But the rule still provides that questions be written and sent up to the desk.

MR. HUNT: Is the Court ready?

CHIEF JUSTICE TERRELL: Yes.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Heller, will you state whether or not you have been appointed as a court aide by any of the other judges of the Eleventh Circuit, and if so, name them?

A Yes sir, I have been many times appointed as guardian, and also as Special Master in Chancery, by Judge Stanley Milledge, Judge Marshall Wiseheart, Judge William Herin, Judge Pat Cannon, Judge Fritz Gordon; yes sir, I have been appointed by those judges, sir, many times.

Q Now, for a considerable period of time the prosecution, to my view, has been trying your activities as a co-curator with Judge Prunty in this Dowling matter. Conceiving it to be the function of the Court to try Judge Holt, and to approach these questions from the standpoint of petitions and motions and hearings before Judge Holt, and contested as the matters appeared to Judge Holt. I have in my hand a three-page document which recites the dates and types and places of record of all orders entered by Judge Holt, or hearings had by Judge Holt in the Dowling case, being some fifty-seven in number, ranging from March 18, 1954 to July 29, 1955.

The first order entered by Judge Holt was the one of March 18, 1954, recorded in Book 1121, at Page 241, entitled "Order Appointing Guardian ad Litem and Committee of Doctors."

Will you state upon what petition or upon what motion Judge Holt entered that first order?

A The Court file reflects that Ina I. Dowling did, under oath, on March 18, 1954, file a suit for the - - - petition for appointment of curator, in which she set forth - - -

Q For Mr. Dowling?

A For Mr. Dowling, in which she set forth some fourteen paragraphs, or reasons why she believed that Mr. Dowling was incapable of managing his separate estate.

She was - - - filed that through her attorneys, Lane, Muir, Wakefield, Frazier & Lane.

Q Is Mr. Lane the one you testified received an over-all fee of \$17,500?

A Yes sir.

Q Was that petition sworn to?

A Yes sir, it shows that a notary public, Lillian Metz, took the oath and acknowledgment of Mrs. Dowling, and that she swore that everything contained in the petition was true and correct, and in the petition, she recited that her husband had failed to account for his money and property; that he had permitted his Lincoln Road property almost to be sold at a

sheriff's sale because he refused to pay a judgment of \$1700; and she recited that he was threatened with losing his Massachusetts property because he hadn't paid taxes up there; and she mentioned that there was a note due at the bank from Malden Trust Company, for \$22,000, which was past due; and she recited that her husband, because of the strokes which he had had in the years 1938 and 1942 and 1952, that he was paralyzed and unable to take care of himself, or to walk alone or to feed or dress himself, and that because of his physical and mental condition, that he was unable to take care of himself, she said that there were no blood relatives of Jewell Dowling, the husband, other than the 80-year-old cousins, who lived in Swanville and in Belfast, Maine; and she recited that she thought that her husband was feeble minded and mentally and physically defective.

Q Very well. Will you give us the prayer for relief? What was specifically requested of Judge Holt?

A "Wherefore, petitioner prays that some competent person be appointed as curator of the property of her said husband, pursuant to the provisions of Chapter 25376, Laws of 1949, Section 747.05, et seq., Florida Statutes Annotated."

Q Now, will you refer to Judge Holt's order?

A The order reflects - - -

Q And by the way, before we get to that, does that petition indicate what division it was filed in?

A Yes sir, the Clerk's certificate indicates that this was filed in Division A, which is Judge Holt's Division.

Q That was under the blind filing system that we have, is that correct?

A Yes sir.

Q Now, what order did Judge Holt enter upon that sworn petition?

A The Judge entered an order that - - - acknowledging that the petition had been filed by the wife, asking for a curator for her husband, and that - - - recited that the only blood relatives were - - -

Q Well, let's not repeat that.

A Yes sir.

Q Just state what the effect of the order was?

A The effect of the order was to set a hearing some seven days later, to appoint myself as guardian ad litem to represent the incompetent, alleged incompetent, and to - - -

Q A hearing seven days later to appoint a guardian ad litem?

A No, the hearing on the petition for the appointment of a curator was set on the day of March 25, 1954, at 10:30 o'clock, a.m.; and the Court did, under Chapter 747, appoint a guardian ad litem, and did appoint two psychiatrists, Dr. James L. Anderson and Dr. Paul H. Kells, practicing physicians in Dade County, to examine Mr. Dowling and to report at the hearing whether or not Mr. Dowling was, in fact, competent or incompetent; and the Court directed also that Mr. Dowling should be made aware of this lawsuit by serving upon him a copy of this order and a copy of the petition which his wife filed, and that he was - - - it was required that he must have that order and the petition more than five days before the date of the hearing itself; that was the requirement of the order.

Q The effect of the latter portion of the order was to require the Petitioner, Mr. Lane, the attorney for Mrs. Dowling, to serve the document upon Mr. Dowling within two days, then, was it not?

A Yes sir, and it meant that Mr. Dowling would have at least five days' notice to prepare his defense to this action.

Q Very well. Have you stated the substance of Judge Holt's first order?

A Yes sir, I believe I have.

Q The next entries I have denote hearings on March 25 and March 26, at which some fifty-five pages of testimony were taken before the Court.

Can you state who gave testimony before the Court?

A Yes sir.

The first witness who appeared before Judge Holt on Thursday, March 25, was Dr. Paul Kells, one of the two psychiatrists who had examined Dr. - - - Mr. Dowling.

Q Mr. Heller, did he testify, or file a written report, or both?

A The doctor filed both a written report, and he testified, subject to cross examination, and so forth.

Q Which is the shortest?

A I guess his written report would be the shortest.

Q How long is it?

A That's three and a third typewritten pages on short sheets of stationery.

Q Single-spaced?

A It's single-spaced; it's not double-spaced.

Q Will you state the substance of that doctor's report, briefly? Did he find Mr. Dowling incompetent and unable to manage his affairs?

A Yes sir, he did.

Q Very well. Did any other doctor file a report, or testify?

A Yes, there was also a psychiatrist, Dr. James L. Anderson, and he filed, also, a written report of one, two, three typewritten pages, and he testified in the Court file - - - or rather, before Judge Holt at the time of the trial.

Q Were you present?

A Yes, I was present, as guardian ad litem, to represent Mr. Dowling.

Q State the substance of Dr. Anderson's report?

A Dr. Anderson said also, independent of Dr. Kells, that Mr. Dowling, in fact, was incapable of managing his separate estate, and that he just had no insight into his own condition, and therefore, could not manage his own - - - his own property, and was liable to dissipate it and to give it away, as Mrs. Dowling had alleged in her original petition, that he had given gifts of some \$2,000 or \$3,000 to Gus, King of Corned Beef, to make a - - - \$3500 to Gus, King of Corned Beef, to make a trip to Europe; that was one of the sworn allegations that Mrs. Dowling recited, that her husband had drawn \$3500 from his North Shore Bank to give to this restaurant owner so that the restaurant owner could make a trip to Europe.

Q Now, was there other testimony on that occasion?

A Yes sir, there was considerable testimony.

There was Mrs. Grace B. Donlin, the former Secretary of Mr. Dowling; and she testified at length, from Page 18 through 38, and redirect at Page 60.

Q And what was the substance of her testimony, briefly?

A Well, that Mr. Dowling had been uncooperative, that he had not reported his Florida receipts, so that it was almost impossible for Mrs. Donlin or for his accountant, Mr. Taylor, to file his Federal income tax return; that he was negligent about things, and seemed to be completely indifferent as to whether or not he would lose this very valuable Massachusetts property for failure to pay delinquent taxes on it; and that in other ways and in other mannerisms, he had just seemed to have lost control of his money and assets, and had not, for example, accounted to Massachusetts for the rents which he should have received, or did receive from his Florida tenants.

Q Did she mention those two boats?

A Yes sir, she spoke at length about the boats, and she said that Mr. Dowling had wasted \$33,000 on those boats in the fifteen-month period through the year 1952 and the first three months of 1953.

Q Had wasted how much?

A He wasted \$33,000 and change. I don't have the exact page.

Q In a fifteen-month period?

A In a fifteen-month period, but the point that the witness made was that these - - - it showed no appreciable - - - it showed no benefit to the boats.

In other words, she believed that these were just fictitious repairs, or claimed or alleged repairs.

In other words, the boats were in no wise improved or enhanced in value.

Q In other words, the repair yard's and captain's items?

A That's right, and she mentioned that Mr. Dowling had not been on the boats in the fourteen years that she had worked for him; he never used the boats; and she mentioned that he just considered them a plaything. When she questioned him about why did he keep up the boats, and so forth, he said, "Well, it's a plaything," but she said that he never used them and had no use for them, and had wasted this vast sum of money on boats which were very old, and she was the one who established at that time the age of the vessels.

Q Now, how long had she been his secretary?

A I believe the witness testified that she had been his secretary since the year 1942.

Q What other witness, if any, testified before Judge Holt?

A On the date of March 25, Dr. Kells was recalled, and Mrs. Donlin again was recalled, and I don't see any indication that there was any other witness.

If I may just - - - it may be that the index - - -

Q Very well.

A You see, the hearings went over four days' time, as I see here, and it may be that the index is not exact in that regard, sir.

Q Now, at the conclusion of the testimony, did Judge Holt - - - or was it at the conclusion of the testimony, from the records before you, that Judge Holt entered an order appointing Mr. Perlmuter as temporary receiver for Mr. Dowling's property?

A Well, the Court file reflects that at the hearing - - - and I remember this, because I was in the room - - - Mr. Dowling decided to employ some lawyers to represent him too, and they filed an answer to the petition for the appointment of a curator.

Q And who were they?

A That was the firm of Warren, Klein, Lehrman, Shoreinstein and Kline, and it was signed by Attorney Nathaniel J. Klein.

Q And what was the effect of their pleading? Did you say they filed an answer?

A They filed an answer, sir, and they counterclaimed.

Q What was the effect of the answer? To deny the petition?

A The answer denied that - - -

Q Very well. Was that the general effect of it, to deny - - -

A Yes sir.

Q - - - the petition?

A Yes sir.

Q Now, you say they also filed a counter-claim?

A That's right.

Q What was the effect of the counterclaim?

A They said that Mrs. Dowling had fallen the victim of a conspiracy at the hands of three persons, a banker in Massachusetts, this secretary, whose name I've previously given you, and another, I believe; and they said that this was a play "whereby the entire assets of Respondent and Petitioner, located both in Florida and Massachusetts, will be subject to the sole and exclusive management and control of the said Gilman and associates."

Q Was Gilman the Massachusetts banker that they accused of being a conspirator?

A Yes, they said that he had used conspiratorial persuasion, instigation and efforts to confuse Mrs. Dowling and to get these assets for himself; and Mr. Dowling signed a counterclaim, under oath also, and he asked Judge Holt to appoint a suitable person - - - and the exact language is "whether a curator, a receiver, or some other person, to act as guardian or manager of the property," pursuant to these statutes; and then - - -

Q Now, that was the counterclaim of Mrs. Dowling?

A Mr. Dowling, yes sir.

Q Now, it alleged that Mr. Dowling himself was incompetent, and that the Court should likewise take charge of his property and business, is that correct?

A That they should take care of the property of Mr. Dowling, right.

Q Mr. Dowling?

A And at the hearing before Judge Holt, both lawyers asked Judge Holt to appoint a receiver.

Q Who were both lawyers?

A That was Mr. Lane, who was Mrs. Dowling's lawyer; and he asked Judge Holt to appoint a receiver until the matter could be finally determined on whether or not there should be a curatorship; and then - - -

Q And he was the attorney who filed the case in the first place, wasn't he?

A Yes sir, he filed the suit for Mrs. Dowling, and then apparently, Mr. Klein and Mr. Lehrman, who were representing Mr. Dowling, they were anxious also for the Court to appoint a receiver until the matter of the curatorship should be confirmed, one way or the other; and so, that was the purpose of this first hearing, to take some emergency steps, both lawyers representing to the Court that something had to be done.

Q Well, upon those representations and requests, the Court did enter its order of March 27, appointing Mr. Perlmuter as temporary receiver for Mr. Dowling's property, is that correct?

A Yes sir.

Q Now, the next order I note is of April 1, 1954 - - - and I will omit the page and book numbers of their recordation; Order Defining Powers of Receiver; do you find that?

A April 13, 1954, yes sir, I do.

This is an order entered by the Court - - - it's a very lengthy order, some four pages.

It appoints the receiver, and explains that he is authorized to collect and receive all of the income and rents and revenues and issues of property; that he's to - - -

Q That's the order appointing the receiver, is it not?

A Yes sir.

Q As of April 13?

A Yes sir, and it sets his bond at \$25,000.

SENATOR HODGES: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Hodges.

SENATOR HODGES: I wonder, sir, if you could instruct the witness to simply answer the questions of counsel for the accused, and make them brief, instead of answering them and then going off into saying other things. I think that we can get at this a lot better.

MR. HUNT: I will ask the witness to answer more briefly and directly, if possible.

THE WITNESS: Yes sir.

CHIEF JUSTICE TERRELL: You heard the suggestion, Mr. Heller.

THE WITNESS: I have, Mr. Chief Justice, and I'll comply with it.

BY MR. HUNT:

Q Then the Court, upon the joint representation and requests of each - - - of both counsel, did enter an order appointing Mr. Perlmutter - - - and I believe you have said it's quite lengthy, and defines rather fully his powers and duties, is that correct?

A Yes sir.

Q Was there a hearing before Judge Holt on April 13, 1954, to determine receiver for Mr. Dowling?

A The file reflects that there was a hearing before Judge Holt on March 25 and March 26 and April 13, yes sir.

Q What was the hearing on April 13? That's what I have reference to.

A Sir, it's impossible for me to tell from this transcript. Without finding the page, I can't tell you.

Q Well, do you know there was a hearing on April 13, 1954?

A Yes sir, I was present.

Q At which ten pages of testimony were taken?

A Yes sir, I believe I was present.

Q What was the general effect of that hearing?

A I think the subject matter inquired into at that time was the question of a receiver for Mrs. Dowling's assets.

Q Was it argument, testimony, or what, produced before the Court?

A I believe that there was testimony and a report of the medical doctors, and argument by the various lawyers before Judge Holt.

Q Then, did Judge Holt enter an order, appointing Mr. Receiver - - - Mr. Perlmutter as temporary receiver for Ina I. Dowling?

A Yes sir.

Q At that hearing?

A Yes, following that hearing.

Q Following that hearing?

A Yes sir.

Q Were both parties represented at that hearing?

A Yes sir.

Q And were you present, as guardian ad litem?

A I believe I was, yes sir.

Q The next item I have is April 15, 1954, Hearing Rebuttal Testimony on Ina I. Dowling. What was that? Thirty-three pages.

A Yes sir. That was also testimony introduced before Judge Holt as to certain records which were in Massachusetts, and their possession and custody.

Q Were you present at that hearing?

A I believe so, yes sir.

Q Do you know who else was present?

A Yes sir, I think that Mr. Lane was present, and I noticed Mr. Klein was present.

Q Attorneys representing both sides were present?

A Yes sir.

Q How many witnesses were examined?

A I think that two witnesses were examined at that time.

Q Is it correct that the testimony is thirty-three pages in length?

A Approximately, yes sir.

Q Very well.

Now, on April 15, 1954, Judge Holt - - - the same day - - - entered an Order Directing Guardian ad Litem to Boston?

A Yes sir.

Q What was the effect of that order?

A The guardian ad litem was served - - - the effect of the order was to instruct and direct the curators - - - the guardian ad litem to - - -

Q That was you?

A Yes sir - - - to go to Massachusetts and to represent the Ward in litigation which was going on.

Q Can you read that small portion of it, please?

A "That the guardian ad litem heretofore appointed by this Court be and he is hereby authorized and empowered to retain counsel in the Commonwealth of Massachusetts for the purpose of maintaining, instituting or defending any actions or any or other proceedings within the Commonwealth of Massachusetts which may affect any of the property, rights or things of the alleged incompetent, Jewell Alvin Dowling."

Q Is that the end of it?

A Yes sir.

Q The next item I have is an order of April 19, 1954, having to do with the Ina I. Dowling receivership. My notes say "Stayed receiver on Ina I. Dowling," recorded in Book 1126, at Page 61.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I've been requested to ask counsel for both sides to meet with the Special Rules Committee for the purpose of determining when to stop today, or how long to go, or whether we meet on Saturday, or what to do, and I, therefore, move that the Court stand in recess for ten minutes, in order that that may be determined, and ask attorneys for both sides to meet with this committee in Room 31.

At the same time, if it please the Court, we'll ask the Senate definitely not to adjourn if we don't get back here prior to adjournment time, in order that we can report back to the Senate, and then, at that time, let the Members of the Senate decide what they'd like to do about it.

I'd like to make that in the form of a motion, please sir, that we stand in informal recess for a period of ten minutes.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You've heard the motion and the second. All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Whereupon, a recess was taken from 11:30 o'clock, a.m. to 11:40 o'clock, a.m.

CHIEF JUSTICE TERRELL: Come to order, gentlemen. A quorum is present.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I move you, sir, that we do now go into executive session, and that the attorneys for both sides be excused from the rule, and be allowed to remain during the session.

SENATOR SHANDS: Second the motion.

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted.

Whereupon, the doors to the Senate Chamber were closed at 11:42 o'clock, a.m., and opened at 11:57 o'clock, a.m.

CHIEF JUSTICE TERRELL: Come to order.

We have three questions that have been sent up here, pertaining to this examination now, and shall I read these over?

MR. HUNT: I would suggest so, Your Honor.

MR. PIERCE: Mr. Chief Justice, those questions were upon the matter of interrogation of the witness?

CHIEF JUSTICE TERRELL: Yes. Well, the first one:

"Is a member of the firm of Lane, Muir, Wakefield, and so forth, subpoenaed to appear here as a witness in this cause?"

MR. PIERCE: I was only inquiring as to the character of the questions.

CHIEF JUSTICE TERRELL: Well, that was one of them, that's the first question.

MR. PIERCE: Yes sir.

SENATOR BRACKIN: Mr. Chief Justice - - -

SENATOR DAVIS: Will the Senator from the First hold up just a minute?

SENATOR BRACKIN: Yes.

CHIEF JUSTICE TERRELL: The question is, shall we take up these questions at the present.

MR. HUNT: If Your Honor please, if I'm not mistaken, it's the consensus of the body that examination be continued at this time, and then begin again Monday afternoon.

CHIEF JUSTICE TERRELL: And these questions will be presented at that time?

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: That will be the order, unless there is some objection.

SENATOR KNIGHT: Mr. Chief Justice, there's one of those questions directed to the House Managers, and they can answer it now, I believe.

CHIEF JUSTICE TERRELL: I understand your - - - the consensus of the Senate is that all these questions go over. Am I correct?

(No response)

CHIEF JUSTICE TERRELL: That will be the order, then. What is the pleasure of the Senate?

SENATOR DAVIS: Mr. Chief Justice, it's my understanding that Judge Hunt, attorney for the Defendant, or one of the attorneys, would like to make a statement at this time.

CHIEF JUSTICE TERRELL: Judge Hunt.

MR. HUNT: Have the doors been opened?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: None of the reporters are here.

CHIEF JUSTICE TERRELL: The Senate is in regular session; so announced.

SENATOR SHANDS: The doors are open.

CHIEF JUSTICE TERRELL: If there's any question about a quorum, why, we'll have a roll call.

(No response)

CHIEF JUSTICE TERRELL: Quorum present.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I'd like to ask that the roll call be verified.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

Whereupon, Secretary Davis called the roll and the following Senators answered to their names:

Adams	Beall	Bishop	Brackin
Barber	Belser	Boyd	Branch

Cabot	Eaton	Johns	Pearce
Carlton	Edwards	Johnson	Pope
Carraway	Gautier	Kelly	Rawls
Clarke	Getzen	Kicklitter	Shands
Connor	Hair	Knight	Stenstrom
Davis	Hodges	Morgan	Stratton
Dickinson	Houghton	Neblett	

SECRETARY DAVIS: Thirty-five present, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Quorum present.

SENATOR DAVIS: I'd like to inquire if Mr. Hunt desires to be heard on a matter? If so, we would like to hear him at this time, Your Honor.

CHIEF JUSTICE TERRELL: Judge Hunt.

MR. HUNT: Mr. Chief Justice and Senators:

It was preliminarily determined by the Senate, I believe, on yesterday that there was a grave question about the right of the Senate to pay for the mileage and travel and per diem of witnesses called here for the defense of the Respondent.

Inasmuch as my search of the authorities had indicated no doubt that the Respondent was entitled to the same subpoena privileges and the same witness fee payment privileges as the State or the prosecution had, I had not procured any evidence of authority upon that point.

However, when I was met with that news on yesterday, we immediately dispatched a telegram to the Secretary of the United States Senate. We requested the Secretary of the United States Senate to advise us, by collect wire, as to the practice of the Senate in the matter of providing witnesses for defendants upon impeachment matters, as to - - - particularly as to whether or not the Senate paid the per diems and traveling expenses of witnesses for the Defendant as well as for the United States.

I would like to read the response which I have in my hand, received at 4:41 yesterday afternoon, addressed to me:

"Reference your telegram. Examination of impeachment cases tried by Senate in last fifty-four years shows Senate paid witness fees and necessary traveling expenses from domicile to Washington and return for both the United States and the Respondent.

"Signed Felton M. Johnston, Secretary of the Senate."

I trust this Senate will reconsider and will accord the Respondent that very necessary opportunity to defend himself.

Thank you.

SENATOR BRACKIN: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: Mr. Chief Justice, in view of the fact that it has been the policy of this Court to follow the rules and regulations, as laid down by the United States Senate in previous trial, I move you, sir, Mr. Chief Justice, that we now rescind the action taken on yesterday with reference to payment of the Defendant's witnesses, and that they be paid likewise, those of the prosecution.

SENATOR GETZEN: Will the Senator yield?

SENATOR BRACKIN: Yes.

SENATOR GETZEN: I've seen in the papers where the Respondent, more than likely, will have, in one issue, fifty-three witnesses, and in another issue, maybe a hundred witnesses.

Don't you think that before we give a blanket check, that if they're going to bring ten witnesses or twenty witnesses of the same nature, maybe character witnesses, and that, then can be proved by five, that we wouldn't be burdened with either the State paying for a lot of co-operating witnesses, and we sitting here, we could - - - in other words, you're willing to pay for a reasonable number, but not an unreasonable number.

SENATOR BRACKIN: Senator, I'd say, in reply to that, that we did not in any way restrict the House Managers and,

as I said at first, that we followed the rules and regulations as laid down by the United States Senate, and I feel that in fairness to this Defendant, he should be accorded the same privileges as those of the prosecuting attorneys, and I feel that he should be requested to limit, as much as possible, and I feel like he will cooperate in that respect, and I'd like for the Chief Justice to request that, but I've put my motion.

SENATOR CONNOR: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Connor.

SENATOR CONNOR: Well, I wanted to ask the Senator a question.

Senator, you don't know what the rule is in the United States Supreme Court, do you, as to how many witnesses they can have at any one trial?

SENATOR BRACKIN: No sir, I know - - -

SENATOR CONNOR: Just as though there are some occasions - - -

SENATOR BRACKIN: There's been no indication by either the defense or the prosecuting attorneys that it's been abused in any way, and I presume that it will not be abused in the future.

SENATOR BEALL: Mr. Chief Justice, I second the motion.

SENATOR EATON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: I'd like permission of Your Honor to ask a question of the counsel for the Respondent, if I may, please sir.

CHIEF JUSTICE TERRELL: All right.

SENATOR EATON: Judge Hunt, on what date would - - - in the event this motion were to carry, on what date would these subpoenas be returnable to this Court?

MR. HUNT: We're in somewhat of a quandary about that because, in an effort to expedite these proceedings and meet the wishes of the Senate to continue as fast as possible, we have subpoenaed our witnesses, as of now, to be here Monday morning at 9:30.

Unless we stop them, a large number who have the money, will undoubtedly be here. On the other hand, my telephone has rung about ten times with reports of witnesses without money cannot be here. So, it leaves the Respondent in sort of a dilemma in the situation.

I would be delighted to be guided by the wishes of the Senate.

SENATOR EATON: Thank you, sir.

Mr. Chief Justice, may I direct a question now to the Managers?

CHIEF JUSTICE TERRELL: Yes.

SENATOR EATON: Mr. Beasley - - -

MR. BEASLEY: Yes sir.

SENATOR EATON: - - - could you estimate, or would it be fair for you to estimate the approximate date or time in which the Managers would have completed their case?

MR. BEASLEY: Yes sir. Senator, I believe, unless the examination of this witness is longer than I think now it will be, that we will possibly be able to finish our case by Tuesday night. We had hoped to finish it today, but the examination of witnesses - - - testimony of the witnesses was somewhat extended, but like I say, we'll be through by Tuesday night, if nothing happens.

SENATOR EATON: Thank you, sir.

SENATOR KNIGHT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: I sent a question up before we recessed, and I wonder if we could have the benefit of the Chief Justice's opinion on this matter.

CHIEF JUSTICE TERRELL: Senator Knight, your question reads like this:

"What is your opinion now in regard to payment of witnesses for Respondent? Should we pay them?"

I think that's a matter, as I said to some of the Senators heretofore, that the law of this case is vested solely in the discretion of the Senate as long as they observe Constitutional guaranty, and if the Senate wants to adopt the motion here made by Senator Brackin, they certainly have the power to do so.

SENATOR KNIGHT: Mr. Chief Justice, the reason for the question was, I understood the Chief Justice yesterday to advise us that in all of his reading all the cases in impeachment matters, that they - - - that he was not able to find where the United States had paid any witness fees for Respondents.

CHIEF JUSTICE TERRELL: It doesn't appear in the study of the cases that the United States has paid them, nor does it appear that they paid any except the expenses of the witnesses for the Managers.

However, here is a telegram from the United States Senate, saying that it incurred the expenses for both; so, this Senate can adopt either rule. If they want to pay them, they can pay them, and if they want to reject them, they can reject them.

SENATOR SHANDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: If Judge Hunt hasn't any objections, I would like myself to see that this telegram is made a part of the record here.

SENATOR KNIGHT: Pardon me if I - - -

MR. HUNT: I have sent it up to the Chief Justice.

SENATOR SHANDS: Are you through, Senator Knight?

SENATOR KNIGHT: In view of that, may I then impose this motion, with apologies to Senator Shands, I now move you, sir, that the defense be allowed ten witnesses to be summoned here for Wednesday of next week. Monday or Tuesday, we can determine the necessity of the expediency of other witnesses.

Let's don't bring fifty witnesses in here and have them sit around here for four or five days. Let's bring them in as we need them.

SENATOR SHANDS: Senator Knight, will you let me make a statement?

SENATOR KNIGHT: Yes sir.

SENATOR SHANDS: I would like to discuss that.

In view of what Mr. Beasley, for the Managers, has said, that they would complete their case Tuesday, and while I know nothing about as to what the Respondent will do, or the Managers, but I anticipate that probably all day Wednesday will be consumed in argument on motions, all day Wednesday, and it appears to me now that Thursday morning - - - and this is after talking to at least one of the Managers here - - - will be about the earliest time that the Respondent could get any witnesses on the stand whatever, would be Thursday morning at 9 o'clock.

I think that we will ultimately go into a closed session, hear all the arguments and then go into closed session, if we do that, we will consume the entire day, all of Wednesday, and if it's necessary to have a motion, I would like to ask Mr. Hunt if he will notify his witnesses, unless there's objection by the Senators, for them to delay their appearance until 9 o'clock Thursday morning.

SENATOR KICKLITER: Second the motion.

SENATOR BRACKIN: Mr. President, will the Senator yield?

SENATOR SHANDS: Yes.

SENATOR BRACKIN: Senator, wouldn't it be much cheaper to this state if those witnesses were to spend one additional day here, and by doing that, hurry this trial along, than it

would if you extend the sessions of this Senate a day, which costs much more than the few witnesses would cost.

SENATOR SHANDS: I think you are absolutely correct. I'm not worrying about - - - I think he'll be doing exceptionally well if he gets to them by 9 o'clock Thursday morning.

SENATOR BELSER: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Belser.

SENATOR BELSER: Will the Senator yield?

Now, upon what do you predicate your statement here that it will not be possible to get to the testimony of these witnesses until Thursday morning?

SENATOR SHANDS: Well, I don't think there's any doubt but that there will be a lot of argument on motions.

Do you anticipate that?

SENATOR BELSER: I don't know, but in view of the statement of the House Manager, Mr. Beasley here, a few minutes ago, that he thought they could wind their case up by Tuesday night - - -

SENATOR SHANDS: Tuesday night - - -

SENATOR BELSER: - - - and then you say Thursday morning. I just wanted to know upon what information that was predicated.

SENATOR SHANDS: My statement - - - you evidently didn't hear my statement.

I said that Wednesday would probably be consumed in the argument on motions, all day Wednesday, and with this Court most likely going into a closed session, which would consume all of Wednesday.

SENATOR BELSER: In other words, you are anticipating that there will be a day spent here in argument?

SENATOR SHANDS: I said that in the beginning, that the anticipation would be that, and that's just merely my thought, Senator.

SENATOR JOHNS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Johns.

SENATOR JOHNS: The Senator from the First and the Senator from the Third have made a motion, but the motion hasn't been put yet. I think that should be decided before we make any more motions.

CHIEF JUSTICE TERRELL: Senator Brackin has made a motion that the Court rescind its action with reference to the payment of the Respondent's witnesses, made yesterday.

All in favor - - -

SENATOR SHANDS: Mr. Chief Justice, I'd like to make a - - - raise a question, or whatever you want to call it, a parliamentary question there.

Although we will have to go back into session, the Senate has never taken any official action, as far as the record is concerned.

So far as the record is concerned, we have not taken any official action on that, and his motion is not a rescission, but it's a direct motion.

CHIEF JUSTICE TERRELL: Senator Brackin, then, will you just change your motion to a direct one, that the Senate assume responsibility for the fee of counsel's witnesses?

SENATOR BRACKIN: I make such a motion, Mr. Chief Justice.

SENATOR KNIGHT: Mr. Chief Justice, I offer a substitute motion, that at this time, the Senate rescind its motion - - - I mean, its action as of yesterday, and that we allow the Respondent ten witnesses for Wednesday, and the early part of the week, prior to Wednesday, let the Senate determine the necessity of other witnesses after conferring with counsel.

CHIEF JUSTICE TERRELL: Senator Knight, I think that your motion should be that we limit the Respondent's witnesses to ten.

SENATOR KNIGHT: Yes sir, at this time.

CHIEF JUSTICE TERRELL: Do the members of the Court understand the substitute?

SENATOR KICKLITER: Second the motion.

CHIEF JUSTICE TERRELL: It's been moved and seconded that - - -

SENATOR EDWARDS: Mr. Chief Justice, I'd like to speak against that substitute motion, because what's fair for one is fair for the other.

SENATOR KNIGHT: I don't see any point in bringing fifty witnesses in here, Senator - - -

SENATOR BRACKIN: Point of order. There's been no second to the motion.

CHIEF JUSTICE TERRELL: I thought someone had seconded Senator Knight's motion.

SENATOR BEALL: He nodded his head, and I thought - - -

SENATOR CARLTON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Carlton, what is it? Do you make a second to Senator Knight's motion?

SENATOR CARLTON: Yes sir, I'd like to second his motion, and then speak briefly in favor of it.

The motion is now that we will allow the counsel for the Respondent to summons ten witnesses, beginning Wednesday; the state will pay for them, and if this motion is carried, that will relieve us of the proposition of just opening the gates and having them bring in some twenty or thirty or forty or fifty witnesses here some hour next week, when we would not be able to hear all of them, and then have - - - after that time, after we hear those ten witnesses, we can determine some future course of action.

I suggest that they should be here on Wednesday, because in the event that our business is finished at Tuesday night, then we will want to hear them on Wednesday. I would rather have them sitting here an extra day than have the Senate sitting here in the absence of witnesses.

SENATOR SHANDS: Will the Senator yield?

SENATOR CARLTON: Yes sir.

SENATOR SHANDS: Mr. Beasley just told us that he thought they would complete all argument by Wednesday noon.

SENATOR RAWLS: By Wednesday morning.

SENATOR SHANDS: Yes.

SENATOR CARLTON: I think it would be wise for this Court to have these witnesses available for Wednesday morning, and for that reason, I move we adopt this substitute motion.

SENATOR BRACKIN: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: I'd like to state that the substitute motion is acceptable to the mover of the original motion.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I'd like to make a few comments in opposition to the substitute motion.

Members of the Senate, we have a situation here that is not similar to anything that has ever happened to us in our lifetime, and will probably never happen again.

We have allowed the State the right to come in here and summons the witnesses that they see fit, without question. For one member of this Senate, I want to be equally fair to the Defendant, and for us to stand up here and say that the Defendant cannot summons but ten witnesses, I think that we are conducting ourselves in such a manner that we are not fair to the Defendant; that's my own personal opinion.

Now, in Federal Court, as I understand the rule, it's within

the discretion of the Court - - - and I've had this rule pulled on me - - - it's within the discretion of the Court to limit the number of character witnesses to some number which the Court deems fit and proper.

I think that we could limit the Defendant on the number of character witnesses, but as far as limiting them to the number of witnesses that he is entitled to put on this stand and bring up to rebut the testimony that is brought out by the state, I think we're going a little too far, and I'm in opposition to it.

SENATOR CARLTON: Mr. Chief Justice Terrell.

CHIEF JUSTICE TERRELL: Senator Carlton.

SENATOR CARLTON: To clear the air on this, at least, it was certainly not the purpose of the sponsor of this motion to limit the counsel for the defense to any specific number of witnesses, but it was our purpose to prevent them from calling an excessive number of witnesses in here on Wednesday or Thursday, and then have to recall them again at some later date, and have them paid twice or three times for their transportation and for their services.

We can determine, on Wednesday or Thursday, at what date and at what hour we will need more witnesses. Certainly, I'll vote to pay the expenses of any number of witnesses within reason, that counsel for the Respondent should choose to call, and it is not the purpose of this motion to restrict them in any manner, and I think after we move on into this trial, next Wednesday or Thursday, we can better determine how many more witnesses we'll need at any subsequent time.

This motion is offered in that spirit, and not in the spirit of restricting;

And I'd further like to say this: Suppose we open the gates, and they summons fifty witnesses in here Wednesday, and we can't hear but ten of them. The purpose of the motion is to restrict that kind of action.

SENATOR SHANDS: Mr. Chief Justice, I would personally like to restrict myself, but I, like Senator Davis, I don't want to tie the hands of the defense.

My experience, what little I've had around the courts here, is that the testimony of one witness may open up an entirely different field that would change the thought or the line of questioning of various witnesses that they might want of succeeding witnesses, and for that reason, I don't want to tie them down to any set number.

SENATOR CARLTON: Senator, would you yield?

SENATOR SHANDS: Yes.

SENATOR CARLTON: Do you see any purpose in summoning any more witnesses than - - -

SENATOR SHANDS: I thoroughly agree with you, but I don't want to place them in a straightjacket.

SENATOR BRACKIN: Mr. Chief Justice - - -

SENATOR KNIGHT: Mr. Chief Justice, there was certainly no intention of limiting the number of witnesses that Respondent should be allowed to call.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: Mr. Chief Justice, I believe I stated in my statement there that the Chief Justice request the counsel to use restraint in summoning these witnesses, and I felt that he would so do, and the attorney stated at that time, in a low tone of voice, that he would do that, and in fairness to the cost of this operation, I believe he will.

SENATOR CARLTON: Mr. Chief Justice, I'd like to take the floor once more, and then I'll be quiet.

Now, I'd like to hear a word from the counsel for the Respondent, as to how many witnesses you think you might need on Wednesday. If you need forty, well, we will provide forty; if you don't need but ten, well, I think we can provide for that.

MR. HUNT: Mr. Chief Justice, and Senator:

In answer to your question, the prosecution, I believe, sub-

poenaed some sixty-five witnesses here. I think our list to date, both those already subpoenaed and a few more to be added as the development of the trial moves along, as you can appreciate, will approximate close to that number.

I will say that if we are - - - if the Senate - - - first, let me tell you this: They were subpoenaed here initially here for Monday morning, as a result of a joint conference between the House Managers, the Chief Justice and myself, the House Managers having announced that they would be through today, and that I'd better have some witnesses here Monday morning.

Now, that's the reason I - - - it's their time schedule that's out of shape, not mine.

Now, those witnesses could be wired by the Secretary of the Senate, or I could select such number as the Senate feels would, in due deference to the tax funds of the state, would be a sensible number to have here, say, on Wednesday or Thursday, or whatever you determine, to finish out the balance of that week, and if it is Wednesday, it seems to me the decision might be made at that time, and we then could determine upon the question of bringing the rest of them up. That's as close as I can get to it.

SENATOR EDWARDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Edwards.

SENATOR EDWARDS: I hastened awhile ago to tell you that I would like to speak against the substitute motion before it even received a second.

My purpose for that was because, as a member of this Court, I certainly desire to be fair, and I'm sure that every member of this Court wants to be fair.

Now, never before, as a member of this Court, have I heard any discussion as to any restrictions, or any manner in which the House Managers were to call their witnesses.

Now, neither do I think that we should have any discussion or ascertain any rulings around here, relative to the defense. What's good for the goose is good for the gander; and Judge Holt and his attorneys are entitled to call their witnesses under the same rules and regulations that the House Managers and the State's Attorney here have been allowed to call theirs.

Now, I do not wish to see the Senate go on record here in the middle of a trial, changing this schedule here, relative to the way they might do with their witnesses when we have no record whatsoever, restricting the House Managers as to the manner in which they have done.

SENATOR CARLTON: Will the Senator yield?

SENATOR EDWARDS: Yes sir.

SENATOR CARLTON: Senator, did you understand that counsel for the Respondent asserted that this substitute motion would be agreeable with him if the State would provide the funds to notify?

SENATOR EDWARDS: No sir, I did not. I heard him say he'd try to work it out, but now, he made mention of the fact that prior to today, that he had met with the House Managers and with the Chief Justice on a discussion; well, then, he can do that again, but I don't want to put him in a straightjacket by setting down a hard and fast rule.

SENATOR KICKLITER: Mr. Chief Justice, I move the previous question.

SENATOR EATON: I want to ask a question, Mr. Chief Justice, of counsel for the Respondent.

CHIEF JUSTICE TERRELL: Senator Eaton asks a question.

MR. HUNT: Yes sir.

SENATOR EATON: Judge Hunt, in your pre-trial conference with the Managers, were distinctions made, as between what I have heard called "character" witnesses and other witnesses who might testify as to the merits of this cause?

MR. HUNT: No.

SENATOR EATON: Do you anticipate calling witnesses

who will testify in the nature of character witnesses, as distinguished from witnesses who might testify as to the merits of the cause?

MR. HUNT: I certainly do.

SENATOR EATON: Sir?

MR. HUNT: I certainly do, and I may say, in the Judge Archbald trial, that that very question was debated at length, and the Senators of the United States allowed Judge Archbald fifteen such witnesses.

I shall not exceed that number.

SENATOR EATON: Judge Hunt, may I ask you another question:

I don't wish for you or for this body to gain the impression that I think there should be any restriction on the number of witnesses that you call at any time, but I did want to ask you this question:

Would it be reasonable procedure, from the standpoint of the Respondent, to subpoena all witnesses who might testify as to the merits of this cause, and then, at some date subsequent to today, subpoena such character witnesses as you might wish to appear here?

MR. HUNT: In answer to the Senator - - -

SENATOR EATON: An unlimited amount, as far as I'm concerned, with the feeling that you will be reasonable in your subpoena-issuing authority.

MR. HUNT: That's a difficult question to answer.

Not knowing what might later develop, from the standpoint of the Managers, and which facet of the case it would be more sensible for us to begin on first with our defense.

SENATOR EATON: I can understand that, sir, and - - -

MR. HUNT: It's just guesswork, which I hesitate to - - -

SENATOR EATON: All right. So I can understand your position, I just wanted to ask that question for some sort of compromise move here.

CHIEF JUSTICE TERRELL: The previous question has been moved.

The Chair understands that the question now before this Court is the adoption of the substitute motion made by Senator Knight, and accepted by Senator Brackin.

All in favor of the substitute motion, let it be known by saying "aye." Opposed, "no."

The "noes" seem to have it.

SENATOR JOHNS: Roll call, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

SENATOR BELSER: Mr. Chief Justice, would you state the substance of the substitute motion we are voting on now?

CHIEF JUSTICE TERRELL: As I understand, the substitute motion was that we - - - the Senate go on record as approving the care of the expenses of the Respondent's witnesses, but limiting them, for the present, to ten.

SENATOR BELSER: Now, by that, do you mean that the defense will be limited, at the present time, to the summoning of ten witnesses to appear Wednesday?

CHIEF JUSTICE TERRELL: That's my understanding of that.

SENATOR BELSER: Is that right?

SENATOR JOHNS: Mr. Chief Justice, I withdraw my request for a roll call.

CHIEF JUSTICE TERRELL: Very well. Senator Johns, you say you withdraw your request for roll call?

SENATOR JOHNS: Yes sir.

CHIEF JUSTICE TERRELL: Did someone else ask for a roll call?

SENATOR BRACKIN: I move the previous question on the original motion, Mr. Chief Justice.

SENATOR STENSTROM: Will the Senator restate his original motion, please?

CHIEF JUSTICE TERRELL: Will you state your motion, Senator?

SENATOR BRACKIN: That the attorneys for the defense - - - this is in substance - - - that they be permitted to call as many witnesses as they see fit and need in the necessary defense of this Respondent; that's the substance of the motion, and that the State of Florida bear the expense of the transportation, and so forth.

CHIEF JUSTICE TERRELL: Do we have a second to the motion?

SENATOR BARBER: I second the motion.

CHIEF JUSTICE TERRELL: Any debate?

All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted.

SENATOR CARLTON: Mr. Chief Justice, I'd like to ask counsel for the Respondent a question, if I may.

MR. HUNT: Yes sir.

SENATOR CARLTON: Do you intend for these witnesses that you have subpoenaed to come in Monday morning?

MR. HUNT: I would like to suggest the practicability of a direction to the Secretary of the Senate to wire these witnesses not to come pending further call, with the exception of - - - we will select a number which, in our judgment, will fill out the week, and on about Wednesday, I will ask for a further determination, necessarily when we do present a motion, there will be a determination as to the necessity of calling in another forty or fifty witnesses, and if it's agreeable with the Senate, we will make the limited selection to fill out the week which, in our best judgment, from this long range view, we can possibly make, and withhold the calling of the balance until further determination, the middle of next week.

SENATOR EATON: Mr. Chief Justice, I move you, sir, that the procedure, as just outlined by counsel for the Respondent, be adopted by the Senate.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You've heard the motion and second. All in favor, let it be known by saying "aye." Opposed, "no."

Motion adopted.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: We have been advised by attorneys for the Respondent that this witness will probably be on the stand on cross examination for a period of four hours. We've also been advised that if we finish up with this witness, that we will probably have to rehash his testimony when we come back next week.

We've also been advised by the attorneys for the State and Managers for the House, that on this particular phase, they have one more witness, and that will take some time.

Also, that it will take the State at least a day after the completion of this phase to finish their testimony in chief.

In view of the statement by the attorneys for the State, and in view of the statement by attorneys for the Respondent, I, therefore, move you, sir, that the Senate do now adjourn, to reconvene at 2:00 p.m., Monday.

SENATOR BELSER: Second the motion.

CHIEF JUSTICE TERRELL: All in favor of the motion that this Court stand adjourned now until 2 o'clock P. M., Monday, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 12:30 o'clock P. M., until 2:00 o'clock P. M., Monday, July 29, 1957.